IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2113 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILIPBHAI MANEKLAL VYAS - Petitioner(s)

Versus

AHMEDABAD ELECTRICITY COMPANY LIMITED - Respondent(s)

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Appearance :

MR CB DASTOOR for Petitioner(s) : 1,
MR KAMAL B TRIVEDI, SENIOR ADVOCATE WITH MR K.M THAKAR & MR KB NAIK FOR M/S TRIVEDI & GUPTA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 13/01/2006

ORAL JUDGMENT

1. This petition is directed against the order dated 14.02.2003 passed by the Industrial Tribunal under the Bombay Industrial Relations Act in Review Application No.

64/2001 whereby the award dated 25.05.01 passed by the Industrial Tribunal in Appeal (IC)No. 01/98 and the award dated 28.11.97 passed by the Labour Court in T Application No. 248/92 were set aside pursuant to which the petitioner herein was relieved from service.

2.1 The brief facts of the case are that the petitioner had applied for the post of Security Inspector advertised by the respondent company. The petitioner after being interviewed and having undergone medical examination was appointed on 26.11.90 on temporary basis. However, by order dated 13.04.92, the petitioner was discharged from service.

2.2 Being aggrieved by the said discharge, the petitioner filed an application before the Labour Court, Ahmedabad being T-Application No. 248/92. The Labour Court by award dated 26.11.92 directed the respondent company to pay the petitioner wages for the period 13.04.92 to 16.02.94.

2.3 Being aggrieved by the aforesaid award, the respondent company filed miscellaneous application no. 223/92 before the Labour Court, Ahmedabad. The

respondent on 16.03.94 submitted a pursis for agreeing to keep all the rights and contentions of the petitioner and to reinstate him in service which was allowed by the Labour Court. The respondent company therefore reinstated the petitioner vide its order dated 18.03.94 on certain conditions by way of which it was agreed that the issue of payment of wages and other benefits for the period 13.04.92 to the date of order of reinstatement in the services will be decided as per the award of the Labour Court in the restored T-Application No. 248/92.

2.4 Thereafter on 9-10th May 1997, the respondent company issued notice inviting applications for the post of Section In-charge in response to which the petitioner applied. After due procedure the respondent company promoted the petitioner as Section In-charge in the Security Department on probation for a period of six months. Subsequently, on 28.11.97, the Labour Court, Ahmedabad allowed T Application No. 248/92 filed by the petitioner and directed the respondent company to pay the petitioner backwages for the period 13.04.92 to 16.02.94. In the meantime, by order dated 29.12.97 the petitioner was confirmed on the post of Section In-charge by the respondent company.

2.5 Being aggrieved and dissatisfied by the award of the Labour Court granting backwages the respondent company preferred an appeal (I.C) No. 01/98 before the Industrial Tribunal. Alongwith the appeal, the respondent company also filed an application for ad-interim stay and whereby it was prayed to stay the operation of the award passed by the Labour Court till the final disposal of the appeal. The said application was granted ex-parte by the Tribunal by way of its order dated 21.01.98.

2.6 Thereafter by order dated 25.05.2001, the Tribunal dismissed the appeal No. 01/98 preferred by the respondent. After the concurrent finding of facts and the decision arrived at by the Labour Court and the Industrial Tribunal, the respondent company preferred Review Application No. 64/2001. The Industrial Tribunal after hearing the respondent allowed the said application and passed the aforesaid order which is challenged in the present petition.

3.0 Mr C.B Dastoor, learned counsel for the petitioner has contended that the Industrial Tribunal has committed an error in granting the Review Application. Mr Dastoor

has further contended that there is a suppression of material fact in the appeal and that the petitioner was granted promotion after having accepted the order of the Labour Court. He has further submitted that the original promotion was on 07.07.97 and the subject matter of the appeal was the order of the Labour Court and the same could have been pointed out by the advocate for the petitioner in the appeal or review application which has not been pointed out.

3.1 He has placed reliance on the decision of this Court in the case of Dolat Industries v Krishna Oil Industries reported in 2001(3) GLH 665 wherein the review application is rejected on the following observation in para 11:

> "From the above it is well settled that the scope of the review is limited. Though, it is vehemently urged that the right of the plaintiff which is prejudiced is sought to be placed before this Court in this review application and no second inning has been initiated but, it is apparent that what is rejected by this Court on merits is being attempted to be decided again. Secondly, the review sought for is not permissible within the ambit and scope of Section 114 or Order 47 of the Civil Procedure Code, simply because something what is decided on merits sought to be decided again. Secondly, if we peruse the judgement for which this review application is preferred in clear terms it is established that there was no prima facie case in favour of the plaintiff to grant any interim relief. At that stage the evidence on record was

> taken into consideration. If any error is committed, the judgement or observation may be subject to appeal to the Higher Forum but not to subject to the review jurisdiction...
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> ...after considering all the facts it was also decided that there was no prima facie case in favour of the plaintiff to grant any interim relief. Undoubtedly, this will give a right to applicant to approach the Higher Forum in appellate jurisdiction and by no stretch or reasoning this can be within a scope of review, and in the circumstances the course adopted by the Apex Court in the decision of Cadila Health Care Limited v Cadila Pharmaceuticals Limited as reported in JT 2001(4) SC 243 was adopted as a precedent and is instead of remanding the application Ex.5 suit was directed to be expedited because for establishing the deceptive similarity, evidence was needed...”

3.2 He has further placed reliance on the decision of the Apex Court in the case of Lachi Tewari v Director of Land Records reported in 1984 (Supple) SCC 431 wherein para 4 & 5 read as under:

> “4. The mere narration of facts would suffice to focus attention on what point is involved in this appeal. The petitioner obtained rule nisi in 1976 and waited for 7 years for it being heard. Suddenly one day the High Court consistent with its calendar fixed the matter for hearing on April 21, 1983. The petitioner had taken extra caution to engage three learned counsels. We fail to see what more can be expected of him. Further we fail to understand what more stops should he have taken in the matter to avoid being thrown out unheard. In Rafiq v. Munshila this Court succinctly brought out this aspect. Says the Court : (SCC p. 789, para 3)
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> *The disturbing feature of the case is that under our present adversary legal system where*

the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the gees demanded by him and then trust the learned Advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquired as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job.

Again in Goswami Krishna Murarilal Sharma v Dhan Prakash this Court reiterated this very principle. And that squarely applies to the facts of this case. On this short ground we allow this appeal, set aside the order of the High Court dated April 21, 1983 as also the order refusing to recall the earlier order dated May 2, 1983 and restore the civil rule to the file of the High Court to be disposed of by the High Court on merits consistent with its calendar.

5. Earlier when the rule nisi was issued some interim relief was granted by the High Court which stood vacated when the matter was rejected for non-prosecution. Now when we restore the rule the interim order shall stand revived. The appeal succeeds to the extent herein indicated with no order as to costs."

3.3 He has also placed reliance on the decision of the Apex Court in the case of G.P Srivasatava v R.K. Raizada reported in (2000)3 SCC 54 wherein it is stated that

justice can only be achieved if defendant is allowed the opportunity to prove his case within a reasonable time.

4.0 Mr Kamal Trivedi, learned Senior Counsel for the respondent has contended that the power under the Bombay Industrial Relation Act is not akin to provisions of order 47 of Rule 1, but is an independent power. He has further contended that the Industrial Tribunal was justified in reviewing the order in view of the error of law on the subject of probationer that inquiry is not required to be conducted.

4.1 Mr Trivedi has further contended that there is no declaration in the order of the Labour Court regarding setting aside the order of retrenchment and subsequently the order of promotion is as a matter of course subject to the order of the Labour Court.

4.2 He has further submitted that reinstatement was in March 1994 and the petitioner was promoted on 07.07.97. The Labour Court passed the award in Nov'97 and the respondent was confirmed in December '97. The appeal was preferred in January '98. In that view of the matter, he has submitted that there is no declaration of the Court's

order granting reinstatement or setting aside the order of relieving the petitioner which has not been challenged.

4.3 Mr Trivedi has further submitted that this petition may not be entertained since there is no declaration by the Labour Court regarding setting aside the order of relieving the petitioner who was on probation. Mr Trivedi has also contended that in view of the observation made by this Court in SCA 2819/2003 a fresh case challenging the order dated 27.02.2003 is before the Labour Court.

5.0 I have considered the arguments of both the sides. As a result of hearing and perusal of records, I am of the opinion that the petitioner ought to have challenged the order of the Labour Court though the Labour Court has observed that the question of reinstatement does not exist. However, there is no declaration regarding setting aside the order of retrenchment which was passed and subsequent to which the petitioner was restored in service.

5.1 In that view of the matter, the petitioner having

accepted the order of the Labour Court qua backwages, it is not possible to accept the contention of Mr Dastoor that the the respondent has been reinstated in service since there is no declaration namely the competent court regarding setting aside the original order of retrenchment of the petitioner from the service. The order of the Labour Court was challenged neither by filing X-Objection nor by way of this petition.

6. Moreover, it may be noted that in this regard the prayer clause of the appeal memo was required to be considered wherein the Labour Court's order dated 28.11.97 was challenged. Since the appellants were of the view that there is no declaration, the appeal was preferred to take appropriate action and in view of Regulation 95. On the facts of the case, I am of the opinion that the provisions of Order 47 Rule 1 of Civil Procedure Code will not apply since there already are provisions for review under the specific Act. In that view of the matter, the order of review passed by the Tribunal is just and proper more particularly when the law on the subject regarding probation is settled that no inquiry is necessary for relieving a person who is on probation.

7. It is required to be noted that there is no declaration by the Labour Court in respect of setting aside the order of retrenchment. The said order was challenged neither by way of appeal or cross-objection nor review was filed by the petitioner. In fact, the order of the Labour Court was accepted by the petitioner wherein the order of retrenchment is not set aside.

8. After the argument was over, Mr Dastoor has requested that he may be allowed to prefer a review application before the Industrial Tribunal for review of the order of the Appellate Court. This request cannot be considered since this request has come not only after hearing the arguments at length but after a period of three years from the date of the order. It is required to be noted that non disclosure of the promotion order has nothing to do with the order of retrenchment of a probationer. In that view of he matter, the petitioner has no merits in the matter.

9. During the course of the argument it was also put forward to the petitioner to satisfy with the compensation of backwages for two years which has been granted by the Labour Court, but the same has been

declined by the advocate for the petitioner.

10. In the premises aforesaid, there are no merits in the petition and the same is, therefore, rejected. Rule is discharged with no order as to costs.

(K.S. JHAVERI, J.)

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